

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TIMOTHY LYNN CLAFLIN,

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY,**

Defendant.

Civil Action No.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, challenging the failure of the United States Secret Service ("Secret Service"), a component of the U.S. Department of Homeland Security ("DHS"), to fulfill the request of Plaintiff for documents relating to and any and all information about him including but not limited to: The entire recording of his job interview process on November 9, 2005. This recording is approximately three hours in length. Agent Brian Luley conducted this process; His application for employment with the United States Secret Service; His oral interview evaluation notes and ranking; Polygraph charts and all audio tapes; Polygraph examiner written reports and evaluations; All information maintained in the United States Secret Service files about Plaintiff.

2. This case seeks declaratory relief that Defendant is in violation of the Freedom of Information Act for failing to act upon and grant Plaintiff's request

for the information; and injunctive relief that Defendant immediately and fully comply with Plaintiff's requests under the FOIA.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552 (a) (4) (B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue is proper in this District pursuant to 5 U.S.C. § 552 (a) (4) (B).

4. Plaintiff Timothy Claflin is harmed by the Defendant DHS's refusal to provide the information, as his liberty is in jeopardy due to a criminal action in the Oklahoma County District Court. The information held by the DHS is exculpatory in nature, and material and necessary to his defense in the criminal action.

5. Defendant DHS is an agency within the meaning of 5 U.S.C. § 552 (f). DHS and its component, the Secret Service, have possession and control of the requested records and are responsible for fulfilling Plaintiff's FOIA request.

STATUTORY PROVISIONS

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request, and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552 (a)(6)(A)(i).

8. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency's determination to either release the withheld records or uphold the denial. 5 U.S. C. § 552 (a)(6)(A)(ii).

9. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and must also provide the "date on which a determination is expected to be dispatched." 5 U.S.C. § 552 (a)(6)(B).

10. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552 (a)(4)(B).

11. The FOIA provides for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the Court finds "the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously," a disciplinary investigation is triggered. 5 U.S. C. § 552 (a) (4)(F).

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

12. The Plaintiff was detained and interrogated for several hours by the United States Secret Service during a job interview on November 9, 2005. This interview was audio recorded in its entirety. As a result of certain statements made during the interrogation, the Plaintiff was charged with a criminal action in the District Court of Oklahoma County, State of Oklahoma. The Plaintiff has sent two FOIA requests to Defendant seeking records of this interrogation process. To date,

the Defendant has not responded. See attached Exhibit 1. The statutory time for Defendant to respond has run, and no extension of time has been requested by the Defendant.

13. The United States Secret Service is currently withholding exculpatory statements made during the course of said interrogation. Both Plaintiff and his attorney submitted affidavits to the Oklahoma County District Court in verification of Plaintiff's claim. See Exhibit 2.

14. There was almost a complete redaction of the recording by the Secret Service. Only the portion that allegedly inculcates the Plaintiff were included on the recording provided by the Secret Service. All other statements, approximately three hours worth of statements, are being withheld. The eight minute portion of the statement is untrustworthy, because the context cannot be ascertained from the eight minutes of tape provided. The Plaintiff cannot offer the rest of the recording into evidence at his state jury trial because the Secret Service refuses to provide it. The rule of completeness set forth in 12 O.S. § 2107, modeled after the federal rule, requires that the Plaintiff be allowed to introduce into evidence any other part or any other record that should in fairness be considered contemporaneously with it. In fundamental fairness, the Plaintiff's complete statement during the interrogation should be introduced, rather than a small portion of it which was taken out of context. It is not a fair and accurate representation of any of the statements made by the Plaintiff to present only a small portion of them.

15. Secret Service Agent Luley has unlawfully caused additional counts to be filed against the Plaintiff. Agent Luley testified during the preliminary hearing on March 28, 2007, approximately a year and a half after he interrogated the Plaintiff. He testified that he was certain the Plaintiff stated that the incident happened multiple times; however, he had not reviewed the audio tape of the Plaintiff's interrogation since he made it approximately a year and a half ago. The Agent's testimony of "two" incidents caused the Plaintiff to be bound over to stand trial on two counts. In reality, the Plaintiff did not say that the incident happened two times; rather, the Agent told the Plaintiff to write down that it happened two times so he would "be covered" for the polygraph as more fully discussed below.

16. As a result of the interrogation by the Secret Service, and while at the office of the Secret Service, the Plaintiff made a recorded statement to Detective Cook of the Edmond Police Department. This statement corroborates the Plaintiff's position that only one incident, albeit non-criminal, occurred. The Plaintiff stated to Detective Cook that the incident happened only one time. The Plaintiff stated that he told Agent Luley that the incident happened only one time and Agent Luley told him to write down that the incident happened "two days". Agent Luley told the Plaintiff the reason for writing down "two" times was "so he would be covered" for the polygraph examination. The Plaintiff then told Detective Cook that his and Agent Luley's statements could be verified by the recording that Agent Luley made. The Plaintiff made repeated attempts to explain the statements he made to Agent Luley during his thirty minute long

interrogation by Detective Cook. The Secret Service has now made it impossible for the Plaintiff to corroborate his statements to Detective Cook and present corroborative, exculpatory evidence of his defense by withholding the most important evidence of all: the tape recording made of everything he and the Agent actually said during this interrogation. The Prosecution intends to use Plaintiff's recorded statement to Detective Cook, and his handwritten statements derived from the Secret Service interrogation as evidence, and should not be permitted to do so under these circumstances. The Plaintiff cannot present existing exculpatory evidence, or effectively confront the witnesses against him without having the complete recording. The Oklahoma County District has found that it is without jurisdiction to order the Secret Service to produce the complete recording.

17. Secret Service Agent Brian Luley is a witness for the prosecution in the state court proceedings. Agent Luley testified under oath during the preliminary hearing and agreed that he would provide the entire recording of the interrogation to the Prosecution. P.H. Tr. p. 23, 26.

18. In addition, Agent Luley was served a state subpoena duces tecum for the recording on January 30, 2007. A subpoena duces tecum was reissued and served on September 11, 2007. The Secret Service has failed to comply with the subpoena, and failed to comply with a FOIA request of June 22, 2006, and a subsequent FOIA request of January 25, 2008, which was received by the Secret Service on February 8, 2008. See attached Exhibit 1. The interrogation by the Secret Service directly led to the charges being filed against the Plaintiff in

State Court. The Secret Service is withholding evidence, in violation of State and Federal discovery requirements. Okla. Stat. tit. 22 §§ 2001, 2002 (Supp. 1994); Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl.Cr. 1990); Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963); Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793 (1967).

PLAINTIFF'S CLAIMS FOR RELIEF

19. Plaintiff realleges and incorporates by reference all preceding paragraphs.

20. Plaintiff properly asked for records within the custody and control of DHS.

21. Plaintiff is entitled by law to access to the records requested under the FOIA.

22. Any privilege which may be alleged by Defendant is waived, given the presence and testimony of its agent during the state court proceedings.

23. Defendant has violated FOIA by refusing to release the records as requested.

24. Defendant has violated FOIA by failing to respond to Plaintiff's FOIA request within the statutory time period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that DHS has violated FOIA by failing to produce the requested records;
2. Order DHS to respond to Plaintiff's FOIA request immediately;

3. Award Plaintiff reasonable attorney fees and litigation costs in this action;
4. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jay F. McCown", is written over a horizontal line.

JAY F. McCOWN, OBA #5921
TAMRA A. SPRADLIN, OBA #14663
QUICK, McCOWN & SPRADLIN
4117 NW 122nd, Suite B
Oklahoma City, OK 73120
Ph. (405) 752-6000
Fax (405) 752-1705
ATTORNEYS FOR PLAINTIFF